

Dee May
Executive Director
Federal Regulatory



1300 I Street N.W., Floor 400W
Washington, DC 20005

Phone 202 515-2529
Fax 202 336-7922
dolores.a.may@verizon.com

April 10, 2001

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

RE: Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Massachusetts, Docket No. 01-9

Dear Ms. Salas:

The enclosed letter was provided as follow up to meetings with the Commissioner offices' staff. Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 01-106.

Sincerely,

A handwritten signature in cursive script that reads "Dee May".

Enclosure

cc: B. Tramont
K. Dixon
J. Goldstein
S. Whitesell
D. Attwood
G. Reynolds
R. Lien
M. Carey
R. Lerner
S. Pie

Michael E. Glover
Senior Vice President
& Deputy General Counsel



1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Phone: 703.974.2944
Fax: 703.525-6436
michael.e.glover@verizon.com

April 10, 2001

EX PARTE

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. – Portals
Washington, D.C. 20554

RE: Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Massachusetts, Docket No. 00-176

Dear Ms. Salas:

I am writing to respond to WorldCom's April 5, 2001 ex parte regarding Verizon's rates for unbundled switching in Massachusetts.¹

WorldCom concedes that the switching rates are the same as those approved by this Commission in the New York proceeding, but nonetheless claims that the New York rates violate TELRIC. As its recent ex parte makes clear, WorldCom's argument is based on the erroneous claim that the local switching rate must be set based solely on the vendor discounts for all *new switches* in order to comply with TELRIC. But the New York PSC, this Commission, and the D.C. Circuit all rejected this very same argument in the New York 271 proceeding, and all three concluded that it is fully consistent with TELRIC to consider discounts for *growth additions to existing switches*.

They did so for good reason. The simple fact is that vendors previously have applied deep discounts to purchases of new switches because of the so-called lock-in effect. In other words, the vendors apply steep discounts to new switch purchases in order to lock carriers into their equipment, and then apply lesser discounts to the growth additions that carriers need in order to increase capacity as demand grows. In the case of incumbents, of course, the overwhelming bulk of their forward-looking switch purchases will consist of growth additions. For that reason alone, it is the cost of growth additions that provide the most accurate measure of an incumbent's forward-looking costs.

¹ See Ex Parte Letter from Donna Sorgi, WorldCom, to Magalie Salas, FCC (Apr. 5, 2001).

But even if it were assumed that in a purely hypothetical world carriers would purchase *only* new switches, that simply means that the discounts that currently apply to new switches would not exist because vendors would not be able to make up for them on later purchases of growth additions. As a result, even under this hypothetical view of the world, the discounts that apply to growth additions still provide the best indicator of what vendors would charge where carriers purchase *only* new switches (because vendors would have to make the money they now receive from growth additions from new switch sales instead). And, at a minimum, the discounts that apply to these growth additions certainly are relevant to determining what switching would cost in such a world.

This is precisely what the Commission previously concluded when WorldCom and AT&T challenged the New York switching rates on the grounds that the PSC took growth additions into account. For example, in upholding the PSC's rates, the Commission explicitly rejected the argument "that TELRIC does not permit recovery of the cost of 'augmented switches,' which are existing switches with capacity upgrades" and flatly rejected the notion that "Bell Atlantic's proposal to recover such costs here violates TELRIC."² Likewise, the Commission explained to the D.C. Circuit that "the reason why growth additions are sometimes more expensive than new switches" is because "vendors have an incentive to sell new switches to telephone companies in the expectation that telephone companies . . . will then become reliant on that vendor's technology to update the switch."³ The Commission accordingly noted that, "in an ideal world where vendors can't lock telephone companies into their product" there would not necessarily be a discount between new switches and growth additions.⁴ For this reason, the Commission stated that "the mere fact that the New York Commission took growth additions into account, is not necessarily inconsistent with TELRIC."⁵

Moreover, the only Commission authority that WorldCom cites for the proposition that switching rates have to be based solely on new switch discounts is the fact that the Commission used new switch discounts as an input for its Universal Service model. But the Commission has held repeatedly that its Universal Service model cannot be used to set prices. In fact, the Commission again rejected this very argument in the context of the New York proceeding, concluding that "[w]e are not persuaded by AT&T's assertion that in our Universal Service proceeding, we disallowed the cost recovery of 'augmented switches,' and that Bell Atlantic's recovery includes such cost recovery, which violates our rules."⁶ As the Commission explained, the Universal Service model "was developed for the purpose of determining federal universal service support," and is not appropriate for "other purposes, such as determining prices for

² New York Order ¶ 243.

³ Oral Argument Transcript at 33-34, AT&T Corp. v. FCC, Nos. 99-1538 & 99-1540 (D.C. Cir. argued Apr. 24, 2000).

⁴ Id. at 35.

⁵ Id.

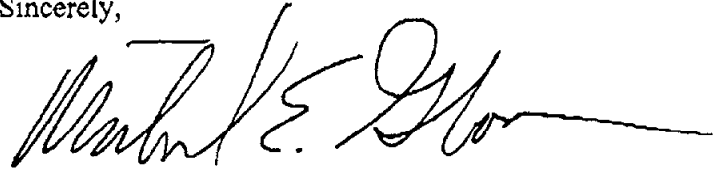
⁶ New York Order ¶ 245.

unbundled network elements.”⁷ “We specifically cautioned parties from making any claims in any other proceedings based on the inputs adopted in the [Universal Service proceeding].”⁸

The D.C. Circuit agreed, noting that it was “comfortable deferring to the Commission’s conclusion that . . . the NYPSC has not made such ‘clear errors in factual findings’ that switching costs fall ‘outside the range that a reasonable application of TELRIC principles would produce.’”⁹ The court noted that the FCC “explained that growth additions to existing switches cost more than new switches only because vendors offer substantial new switch discounts in order to make telephone companies dependent on the vendors’ technology to update the switches.”¹⁰ Based on this, the court found that “the Commission reasonably concluded that ‘inclusion of growth discounts’ ‘did not violate TELRIC.’”¹¹

For all these reasons, WorldCom’s attempt to resurrect its previously rejected claim that New York’s switching rates violate TELRIC simply because they do not rely solely on new switch discounts is wholly unavailing.

Sincerely,



Michael E. Glover

Cc: Chairman Powell
Commissioner Furtchgott-Roth
Commissioner Ness
Commissioner Tristani
K. Dixon
B. Tramont
J. Goldstein
S. Whitesell
G. Reynolds

⁷ Id.

⁸ Id.

⁹ AT&T v. FCC, 220 F.3d 607, 617 (D.C. Cir. 2000).

¹⁰ Id. at 618.

¹¹ Id.